

(2015) 01 BOM CK 0289

In the Bombay High Court

Case No : Writ Petition No. 3528 of 2001, Civil Application No. 503 of 2015 and Civil Application No. 108 of 2015

Rangnath and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Maharashtra Universities Act, 1994 — Section 14, 8(1)(b)

Citation : (2015) 01 BOM CK 0289

Hon'ble Judges : Anand Vasant Nirgude, J; V.K. Jadhav, J

Bench : Division Bench

Advocate : S.R. Choukidar, for the Appellant; K.J. Ghute Patil, A.G.P., Advocates for the Respondent

Final Decision : Disposed off

Judgement

Anand Vasant Nirgude, J—This petition is decided only for the purpose of claims of petitioners No. 5 and 6, as the other petitioners have amicably settled their claims with the respondents.

2. The petitioners No. 5 & 6 (henceforth referred to as the petitioners) were permanent employees of respondent No. 6 College. Respondent No. 5 is a society which runs respondent No. 6 College. Respondent No. 6 is a degree level private self-financing technical institution (Private Engineering College). It does not receive any grants either from the Central Government or from the State Government.

3. The All India Council for Technical Education Act, 1987 established a Council under Section 3 of the Act. This Council has various functions, which are enumerated under Section 10 of the Act. Section 10 of the AICTE Act reads as under:

"S. 10 : Functions of the Council

It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may-

(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;

(b) co-ordinate the development of technical education in the country at all levels;

(c) allocate and disburse out of the Fund of the Council such grant on such terms and conditions as it may think fit to--

(i) technical institutions, and

(ii) Universities imparting technical education in co-ordination with the Commission;

(d) promote innovations research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet developmental requirements and for overall improvement of educational processes;

(e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the society;

(f) promote an effective link between technical education system and other relevant systems including research and development organisations, industry and the community;

(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;

(h) formulate schemes for the initial and in-service training of teachers and identify institutions or centres and set up new centres for offering staff development programmes including continuing education of teachers;

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

(j) fix norms and guidelines for charging tuition and other fees;

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

(l) advice the Central Government in respect of grant of charter to any professional body or institution in the field, of technical education conferring

powers, rights and privileges on it for the promotion of such profession in its field including conduct of examination and awarding of membership certificates;

(m) lay down norms for granting autonomy to technical institutions;

(n) take all necessary steps to prevent commercialisation of technical education;

(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;

(p) inspect or cause to inspect any technical institution;

(q) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council;

(r) take steps to strengthen the existing organisations and to set up new organisations to ensure effective discharge of the Council's responsibilities and to create positions of professional, technical and supporting staff based on requirements;

(s) declare technical institutions at various levels and types offering courses in technical education fit to receive grants;

(t) advice the Commission for declaring any institution imparting technical education as a deemed University;

(u) set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the Council or to the Commission or to other bodies, regarding recognition or derecognition of the institution or the programme;

(v) perform such other functions as may be prescribes."

4. Having regard to the functions of the Council, it is clear that respondent No. 6 was under obligation to observe all the norms and standards prescribed by the Council for such College. Respondent No. 6 is affiliated to the Pune University, which is respondent No. 3 in this petition, under the provisions of Maharashtra Universities Act, 1994.

5. The Government of India, has issued an order on 09.10.1998 thereby implementing revision of pay-scale of teachers in technical institutions following revision of pay-scales of Central Government employees on recommendation of 5th Central Pay Commission. The Government of India, vide their letter dated 09.10.1998, advised the AICTE to notify the service conditions of teachers in degree level technical institutions incorporating the pay-scales and other related conditions. Accordingly, the AICTE issued a notification in respect of pay-scales and service conditions of teachers etc. in Technical Institutions, including degree level private self-financing Technical Institutions, such as respondent No. 6. The

relevant portion of AICTE notification which is applicable to respondent No. 6 reads as under :

"2.1 Scope

The provisions of this notification shall apply to teachers, librarians and physical education personnel in all degree level Private Self Financing Technical Institutions, which are covered under the AICTE Act.

The revised pay-scales given in Table (Appendix D 1, 2, 3) shall apply to all self-financing degree level Technical Institutions.

2.2 Date of Effect

The revised pay-scales shall be effective from 1.1.96. Other terms and conditions of service shall come into force w.e.f. the date of notification by the State Govts / UT Administrations."

6. A similar notification with necessary changes was also issued by AICTE for revision of pay-scales etc. of teachers etc. of degree level Technical Institutions, which included State Aided Institutions. The date of effect given to such notification reads as under:

"2.2 Date of Effect

The revised pay-scales shall be effective from 01.01.1996 or from such later date as the respective state Govts/UT Administrations may decide. Other terms and conditions of service shall come into force w.e.f. the date of notification by the State Govts/UT Administrations."

7. The Government of Maharashtra, on 18.12.1999, issued a Resolution granting its approval for implementation of revised pay-scales to teachers etc. in Government and Non-Government Engineering Colleges w.e.f. 01.01.1996. However, on 04.10.2000, the Government of Maharashtra issued another notification to effect certain change in the date of implementation of the revision of pay-scales in respect of certain class of teachers and other staff members. The Government of Maharashtra learnt that there were difficulties for unaided institutions to make payment of arrears on -account of revision of pay-scale to their teachers w.e.f. 01.01.1996 and so, the Government was pleased to direct that the scheme of revision of pay-scale declared under the earlier resolution would be applicable to the teachers and other staff members of unaided Engineering Colleges and other equivalent institutions w.e.f. 01.08.2000.

8. The petitioners essentially challenge the legality of this change effected by notification dated 04.10.2000. According to the learned counsel for the petitioners, this change is repugnant to the notification of AICTE referred to above.

9. The learned counsel for the petitioner in support of his submissions has placed reliance on the judgment of Supreme Court in the case of Parshavanath

Charitable Trust and Others Vs. All India Council for Tech. Edu and Others, (2013) 1 AD 1 : (2013) 1 JT 557 : (2012) 12 SCALE 219 : (2013) 3 SCC 385 : (2013) 2 SCT 163 . Paragraphs 27 and 28 of the judgment read as under:

"27. The consistent view of this Court has been that where both Parliament and State Legislature have the power to legislate, the Central Act shall take precedence in the matters which are covered by such legislation and the State enactments shall pave way for such legislations to the extent they are in conflict or repugnant. As per the established canons of law, primacy of the Central Act is undisputable which necessarily implies primacy of AICTE in the field of technical education. Statutes like the present one as well as the National Council for Teachers Education Act, 1993, the Medical Council of India Act, 1956, etc. fall within the ambit of this canon of law. The AICTE is the authority constituted under the Central Act with the responsibility of maintaining operational standards and judging the infrastructure and facilities available for imparting professional education. It shall take precedence over the opinion of the State as well as that of the University. The concerned department of the State and the affiliating university have a role to play, but it is limited in its application. They cannot lay down any guidelines or policies in conflict with the Central statute or the standards laid down by the Central body. The State can frame its policies, but such policy again has to be in conformity with the direction issued by the Central body. Though there is no such apparent conflict in the present case, yet it needs to be clarified that grant of approval by the State and affiliation by the University for increased intake of seats or commencement of new college should not be repugnant to the conditions of approval/recommendation granted by the AICTE. These authorities have to work in tandem as all of them have the common object to ensure maintenance of proper standards of education, examination and proper infrastructure for betterment of technical educational system.

"28. It is also a settled principle that the regulations framed by the central authorities such as the AICTE have the force of law and are binding on all concerned. Once approval is granted or declined by such expert body, the courts would normally not substitute their view in this regard. Such expert views would normally be accepted by the court unless the powers vested in such expert body are exercised arbitrarily, capriciously or in a manner impermissible under the Regulations and the AICTE Act. In the case of All India Council for Technical Education Vs. Surinder Kumar Dhawan and Others, AIR 2009 SC 2322 : (2009) 5 JT 216 : (2009) 11 SCC 726 : (2009) 3 SCR 859 : (2009) 4 SLR 520 , this Court, while stating the principles that the courts may not substitute their opinion in place of opinion of the Council, held as under:-

" The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in. In Dr. J.P. Kulshreshtha and

Others Vs. Chancellor, Allahabad University and Others, AIR 1980 SC 2141 : (1980) 41 FLR 318 : (1980) LabIC 692 : (1980) 2 LLJ 175 : (1980) 3 SCC 418 : (1980) 3 SCR 902 this Court observed:

Judges must not rush in where even educationists fear to tread... While there is no absolute bar, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.

In Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, AIR 1984 SC 1543 : (1984) 2 SCALE 30 : (1984) 4 SCC 27 : (1985) 1 SCR 29 : (1984) 16 UJ 1107 , this Court reiterated:

..the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical -12-expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them."

"18. This is a classic case where an educational course has been created and continued merely by the fiat of the court, without any prior statutory or academic evaluation or assessment or acceptance. Granting approval for a new course or programme requires examination of various academic/technical facets which can only be done by an expert body like AICTE. This function cannot obviously be taken over or discharged by courts. In this case, for example, by a mandamus of the court, a bridge course was permitted for four year Advance Diploma holders who had passed the entry level examination of 10+2 with PCM subjects. Thereafter, by another mandamus in another case, what was a one time measure was extended for several years and was also extended to Post Diploma holders. Again by another mandamus, it was extended to those who had passed only 10+1 examination. Each direction was obviously intended to give relief to students who wanted to better their career prospects, purely as an ad hoc measure. But together they lead to an unintended dilution of educational standards, adversely affecting the standards and quality of engineering degree courses. Courts should guard against such forays in the field of education".

10. Per contra, learned senior counsel for the respondent Nos. 5 and 6 while opposing the petition placed reliance on two judgments, viz. i) Jagdish Prasad Sharma Vs. State of Bihar and Others, (2014) 7 AD 629 : (2013) 3 LLN 401 : (2013) 9 SCALE 459 : (2013) 8 SCC 633 : (2014) 1 SCC(L&S) 290 and ii) Sunanda Pandharinath Adhav and Others Vs. State of Maharashtra and Others, (2001) 1 BomCR 809 : (2001) 1 BOMLR 710 : (2001) 1 MhLj 167 .

11. In Jagdish Prasad Sharma's case, the Supreme Court was examining as to whether the University Grants Commission (UGC), which is a similar organization established under the Central Act can alter the terms and conditions of teachers, who are paid salaries by the State Government. In this case, the UGC framed a scheme for revision of pay and increase in age of superannuation of University

Teachers. Such scheme would be applicable with regard to the service conditions of teachers in Centrally funded educational institutions. The acceptance of scheme was left by the UGC to the discretion of the State Government. In certain writ petitions filed by the teachers in Patna High Court, the Court held that once the Commission recommended certain norms, the State Government had no discretion but to accept the scheme and to implement it. However, this decision was reversed by the Division Bench holding that mere communication by the Commission of its recommendation the same would not automatically become effective. It would be within the domain of the State Government to decide as to what recommendations can be adopted and from what date. The Supreme Court upheld this decision of the Division Bench of Patna High Court. The Supreme court held that there is no compulsion on the State Government to adopt the scheme. While deciding this, the Supreme Court also discussed entry 66 of list 1 and entry 25 of list 3 of Schedule VII. It was held that on one hand the Commission had a right to frame regulation which have force of law but the State Government are also entitled to legislate in the matters relating to education. It is further held that the Commission is not empowered to alter any terms and conditions of enactment by the State. The ratio of this judgment is not applicable to the facts of this case. As stated above, the AICTE directed that recommendation of pay commission should apply to the employees of self financing institutions w.e.f. 01.01.1996. Using its discretion, the State Government passed certain Resolutions. Once this was done, the State Government would not have power to alter its own decision to take away certain benefits that were given by their own Resolutions earlier. The most important factor that would affect the decision in this case is the fact that respondent No. 6 is admittedly a self financing Engineering College.

12. The other judgment is delivered in the case of Sunanda vs. State of Maharashtra (supra) by the Division Bench of this Court where the question was whether the principle of equal pay for equal work is applicable to unaided schools. The Division Bench in that case was inter alia deciding as to whether the Government of Maharashtra could extend the benefits of 5th Pay Commission to teachers etc. in private schools, would be applicable from the date different than the date recommended by the Commission. The Court by placing reliance on the judgment of Gujarat High Court held that in the State of Maharashtra private unaided schools did not have freedom to enhance the tuition fee. It is the State Government which has power to fix such fee. Such management thus were at the mercy of the State Government and therefore, the State Government's decision to make recommendation of pay scales applicable from different date cannot be said to be unreasonable and arbitrary.

13. In the facts and circumstances of this case, even the ratio of this Judgment would not be helpful to the respondents. Respondent No. 6 is unaided self financing Engineering college. No doubt, one of its source of income is tuition fee but the respondent No. 5 is charitable trust. It has number of opportunities to increase its income. If they started unaided Engineering College, we must

assume that they are aware of the costs of running such college and would also know as to how to muster finance for it. By no stretch of imagination, we can say that the tuition fee could be only the source of income. A charitable trust can receive donations from various parties in the society. This could be one of the sources of income to them. So there is every possibility that respondent No. 5 should be able to shoulder this burden of additional expenses. We have no intention to help the respondents in avoiding this liability.

14. The question is whether the notification of AICTE, referred to above, is binding on the Government of Maharashtra or whether the Government of Maharashtra can differ its implementation?

15. The All India Council for Technical Education Act, 1987 is a Central enactment enacted pursuant to the Center's power mentioned in Schedule 7, List 1, Entry No. 66, which reads as under:

"66.Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

16. This Act is similar to the Universities Grants Commission Act, 1956 which established a Commission under the provision of the said Act. As said above, under the provisions of AICTE Act, a Council is established for looking after the aspects, which are mentioned above in Entry No. 66.

17. The State also has certain powers to make enactments on the subjects which are listed in Schedule 7, List 2 and 3. Entry No. 25 of List 3 reads as under :

"25.Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour"

18. In view of this list, the State Government enacted Acts such as Maharashtra Universities Act, 1994, Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 etc. Section 10 of AICTE Act provided the sphere of control exercised by the Council established under the Act over Colleges and Technical Institutions all over India. On the other hand, respondent No. 6 which is an Engineering College, is affiliated to Pune University under the provisions of Maharashtra Universities Act, 1994. Section 8(1)(b) provided that the State Government would control the Universities in respect of pay, allowances, retiral benefits etc. of teachers etc.. Section 14 provided powers and duties of the Vice Chancellor. Sub-section (8) provided that the Vice Chancellor may, from time to time regulate matters by issuing statutes, ordinances. Pursuant to this power and with the approval of the State Government, the Vice Chancellor issued Ordinance on 25.08.2000 wherein it is provided that the scales of pay recommended by AICTE were accepted by the Government of India and are also approved by the State Government and therefore, they are made applicable w.e.f. 01.01.1996.

19. In this background, we have to examine as to whether the Government

Resolution dated 04.10.2000 has encroached upon the powers of AICTE. As said above, the AICTE unequivocally mentioned in their notification that they recommended 01.01.1996 as the date of implementation of the pay-scale for teachers in Private Self-Financing Engineering Colleges. The question is whether the date so mentioned in the notification can be changed unilaterally by the Government of Maharashtra by issuing notification? The answer has to be in negative. While issuing notification, the AICTE did not leave any discretion to the State Government in respect of date of implementation of revision in pay-scales for colleges like respondent No. 6. In other notification, such a discretion was left to the State Government mainly because it is the State Government, which was to burden the shoulder.

20. On the other hand, such concession was obviously not required in case of self-financing colleges. Their finances do not depend on the State Government or Central Government. So, their teachers would get revised pay-scale w.e.f. 01.01.1996. In such situation, the financial condition of self-financing institutions had no concern with the State Government at all. The State Government might have received reports about poor financial condition of self-financing institutions like respondent No. 6 then they could have provided financial aid etc. to them without interfering in the decision of AICTE.

21. One more question remains as to whether the notification of AICTE has supremacy and precedence over the opinion of the State Government in respect of financial condition of self-financing institutions like respondent No. 6. The AICTE, the University to which a college is affiliated, and the State Government, are under obligation to work in tandem for not only establishing Technical Institutions such as Engineering Colleges etc. but also for maintaining the standard of education. The AICTE is the supreme body, which controls almost all aspects of Technical Institutions. If any of the conditions imposed by AICTE is violated by a college, no matter whether the University continues affiliation and the State Government also continues its permission, the AICTE can withdraw its approval given to the college for its failure to abide by the norms and standards. Such is the power exercised by Council of AICTE. The notification referred to above, gives a clear-cut indication that the recommendations of pay-scale were made effective from 01.01.1996 in respect of self-financing institutions like respondent No. 6. If at all the University or the State had any other view on this matter, they could not have exercised their discretion to cause interference in the direction of AICTE. The notification dated 04.10.2000 appears to be a decision taken without taking into account its implications and legality.

22. We have no hesitation to set aside this notification being ultra vires to the Constitution, in as much as it is causing interference in implementation of AICTE Act which is a Central Act.

23. In the result, writ petition is allowed in terms of prayer clauses "A" and "B". Rule made absolute in the above terms. The implementation of this judgment and order shall be made within 16 weeks from today. It is made clear that the

petitioners should be paid difference/arrears from 1.1.1996 till the date of their termination.

24. Pending civil applications do not survive and the same stand disposed of accordingly.